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KOBAYASHI, SUGITA & GODA

LEX R. SMITH 3485-0

THOMAS H. YEE 7344-0

First Hawaiian Center

999 Bishop Street, Suite 2600

Honolulu, Hawaii 96813

Telephone No. (808) 539-8700

Facsimile No. (808) 539-8799

Email: lrs@ksglaw.com

Attorneys for Defendants

C&S LOGISTICS OF HAWAII, LLC, C&S

WHOLESALE GROCERS, INC., C&S

ACQUISITIONS LLC; ES3, LLC, and RICHARD

COHEN

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

VS.

HAWAIIAN EXPRESS SERVICE,
INC., et al.,

Defendants.

) CIVIL NO. CV03-00385 SOM-LEK
) (Copyright)

) **DECLARATION OF LEX R.**
) **SMITH; EXHIBITS "A" – "B"**

DECLARATION OF LEX R. SMITH

I, LEX R. SMITH, under penalty of perjury, state as follows:

1. I am an attorney licensed to practice law before all of the State and Federal Courts in the State of Hawaii and am one of the attorneys representing Defendants C&S LOGISTICS OF HAWAII, LLC, C&S WHOLESALE GROCERS, INC., C&S ACQUISITIONS LLC; ES3, LLC, and RICHARD COHEN ("C&S") in this case.

2. Attached hereto as Exhibit "A" is a true and correct copy of the May 12, 2006 cover letter I wrote and sent to Timothy Hogan, along with the enclosures as described therein.

3. Attached hereto as Exhibit "B" is a true and correct copy of my May 15, 2006 letter to Mr. Hogan, regarding a correction to one of the enclosures to my May 12 letter.

I declare under penalty of perjury that the statements made herein are true and correct to the best of my knowledge, information and belief.

DATED: Honolulu, Hawaii, July 5, 2006.

/s/ Lex R. Smith

LEX R. SMITH